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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/237,194	01/26/1999	STEPHEN JAMES BROWN	HERO113397	9517

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EXAMINER

KALINOWSKI, ALEXANDER G

ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 04/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/237,194

Applicant(s)  
Brown

Examiner  
Alexander Kalinowski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Feb 28, 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 25-33 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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### **DETAILED ACTION**

1. Claims 25-33 are presented for examination. Applicant filed an amendment on 9/8/2000 amending claim 25. Applicant further filed a request for continued prosecution application on 2/28/01. A preliminary amendment was not filed with the request for continued prosecution application. Therefore, previously filed claims 25-33 were not amended and remain pending. Applicant further filed a request for suspension of prosecution for six months on 3/28/2001. The request for suspension was granted. The period for suspension of prosecution expired on 4/9/2003. Therefore, the instant office action is in response to the continued prosecution application on 2/28/01. Since Applicant did not submit arguments to the outstanding grounds of rejection of claims 25-33 based on 35 USC 103 and Applicant did not amend pending claims 25-33, the Examiner maintains the grounds of rejection of claims 25-33 based on 35 USC 103 and the instant office action is a final rejection of claims 25-33.

### ***Remarks***

2. Applicant requested a suspension of prosecution on 3/28/2001. The request for suspension was granted on 9/16/ 2002. The suspension period expired on 4/9/2003. Since the Applicant did not request a second suspension of prosecution, the suspension of prosecution is expired and prosecution is resumed from the time of Applicant's request for suspension of prosecution. Therefore, the instant office action is in reply to Applicant's request for continued prosecution application filed on 2/28/2001.

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***Continued Prosecution Application***

3. The request filed on 2/28/01 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/237,194 is acceptable and a CPA has been established. An action on the CPA follows.

***Claim Objections***

4. Claim 25 is objected to because of the following informalities: typographical error in claim 25.

On page 2, line 2, replace "interface unit" with --interactive unit--. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 25-27 and 29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujimoto, U.S. Patent No. 5,339,821 in view of Fu et al., Pat. No. 5,803,625.

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As per claim 25, *Fujimoto* discloses a health monitoring system comprising:

a monitoring device for monitoring a condition indicative of a person's physical well-being and for generating a digitally encoded health signal representative of said monitored condition [Figure 5 (monitor person's blood pressure)];

a patient interactive and feedback unit coupled to said monitoring device comprising:

a display [Figure 2, Ref. No. 14];

an input device for receiving input [Figure 2, Ref. No. 15, 16, 17 (buttons for entering "yes," "no," and a selection)];

a memory comprising program components [Figure 4, Ref. No. 33]; and

a processor coupled to said input device and said display [Figure 4, Ref. No. 25 (cpu)] for generating a video signal according to at least one of the stored program components, the received input and the generated digitally encoded health signal, wherein said display generates a display according to said generated video signal;

a signal interface coupled to said interface unit for generating a transmission signal according to at least one of said generated video signal and the generated digitally encoded health signal [Figure 1, Ref. No. 2]; and

a health provider unit comprising a processor and display [Figure 1, Ref. No. 5], said health provider unit is coupled to the signal interface over a digital network for receiving the generated transmission signal [Figure 1, Ref. No. 3], wherein the processor of said health provider

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unit generates a video signal according to said received transmission signal and said display of said health provider unit generates a display according to said video signal generated by the processor of said health provider unit [Figure 1, Ref. No. 3].

*Fujimoto* does not explicitly disclose

a clearinghouse facility coupled to the signal interface over a digital network for receiving said transmission signals supplied via said signal interface, said clearinghouse facility being remotely located from said patient interactive and feedback unit and capable of storing said video signal for remote retrieval and retransmission.

However, *Fu* discloses a clearinghouse facility (i.e. computer 24) coupled to the signal interface over a digital network for receiving said transmission signals supplied via said signal interface, said clearinghouse facility being remotely located from said patient interactive and feedback unit and capable of storing said video signal for remote retrieval and retransmission (see Fig. 3 and col. 7, lines 49-55). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the clearinghouse facility within the *Fujimoto* system in order to store health parameters data of a patient to assist medical personnel in assessing the health of the patient (col. 2, lines 1-16).

As per claim 26, *Fujimoto* does not disclose that the patient interactive and feedback unit is a palmtop computer. Official notice is taken that palmtop computers capable of providing interaction and feedback are well known in the computer arts. E.g., 3Com Palm Pilot. It would have been obvious to one of ordinary skill in the art at the time the invention was made to

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incorporate some of the functionality of the invention using a palmtop computer. The motivation would have been to provide a convenient way to provide interaction.

As per claim 27, *Fujimoto* does not disclose that the patient interactive and feedback unit is a personal digital assistant or PDA. Official notice is taken that personal digital assistants (PDA's) capable of providing interaction and feedback are well known in the computer arts. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate some of the functionality of the invention using a PDA. The motivation would have been to provide a convenient way to provide interaction.

As per claim 29, *Fujimoto* discloses that said memory stores said monitored condition indicative of the person's physical well-being, said video signal generated by said processor of said patient interactive and feedback unit is a trend chart corresponding to said stored monitored condition indicative of the person's well-being, and said display of said patient interactive and feedback unit displays said trend chart [Figure 6 (EKG)].

As per claim 30, *Fujimoto* discloses that said patient interactive and feedback unit receives information from the health provider unit, processes the received information and displays the processed information on the display [col. 5, line 68 to col. 6, line 9 (doctor remotely inputs medical questions that are then transmitted to the apparatus)].

As per claim 31, *Fujimoto* discloses a health monitoring method comprising:  
monitoring a patient for a health-related parameter and generating an encoded health signal representative of said monitored parameter [Figure 5 (monitor person's blood pressure)];

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generating a display for viewing by the patient according to the encoded health signal [Figure 5 (note that blood pressure value is displayed in this process)];

generating a transmission signal incorporating the encoded health signal [Figure 1]; and transmitting said transmission signal to a remote facility [Figure 1].

As per claim 32, *Fujimoto* discloses generating a digitally encoded health signal comprises generating a history of said monitored health-related parameter and generating a display comprises a display of a trend chart corresponding to said generated history of said monitored health-related parameter [col. 8, lines 31-34 (“Further, the host computer can provide a display of a variation graph of the blood pressure, the pulse, the body temperature, the weight and so forth for the last month....”)].

As per claim 33, *Fujimoto* discloses generating a display at said health provider unit according to said received transmission signal [Figure 1].

7. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Fujimoto*, U.S. Patent No. 5,339,821 and *Fu et al.*, U.S. Patent No. 4,803,625 as applied to claim 25 above and further in view of *Kuch*, U.S. Patent No. 5,454,721.

As per claim 28, *Fujimoto* discloses that said patient interactive and feedback unit displays statistical data graphically or alphanumerically [col. 4, lines 48-56 (the pulse rate is statistically determined by taking a sample of pulses; the pulse rate is then displayed to the patient)].



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*Fujimoto* does not disclose that said patient interactive and feedback unit performs a testing sequence and associated calibration and testing procedures.

*Fu et al.* teach a patient interactive and feedback unit that performs a testing sequence and associated calibration and testing procedures [Figure 7]. It would have been obvious to one of ordinary skill in the art at the time was made to combine the testing sequence and associated calibration and testing procedures taught by *Fu et al.* with the system of *Fujimoto*. The motivation would have been to provide an efficient way to test the system for errors to avoid possible misdiagnosis or incorrect results.

*Fujimoto* does not disclose that said patient interactive and feedback unit supplies control signals and signals representative of food intake; and simultaneously displays information representative of said monitored condition with images representative of food intake.

*Kuch* teaches a patient interactive and feedback unit that supplies control signals and signals representative of food intake; and simultaneously displays information representative of said monitored condition with images representative of food intake [col. 10, lines 6-29 (displaying nutritional information including American Dietetic Association Food Exchange Units and food images for selected foods)]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine these features of *Kuch* with *Fujimoto*. The motivation would have been to educate patients as to proper nutrition so as to carefully manage the medical condition. See *Kuch*, "Background of the Invention" for a discussion of the role of

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nutrition in managing illness, and the importance of using graphical tools to educate persons including diabetics as to proper nutrition.

*Conclusion*

8. All claims are drawn to the same invention claimed in the parent application prior to the filing of this Continued Prosecution Application under 37 CFR 1.53(d) and could have been finally rejected on the grounds and art of record in the next Office action. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing under 37 CFR 1.53(d). See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Kalinowski, whose telephone number is (703) 305-2398. The examiner can normally be reached on Monday to Thursday from 6:30 AM to 4:00 PM. In addition, the examiner can be reached on alternate Fridays.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached on (703) 305-9588. The fax telephone number for this group is (703) 305-7687 (for official communications including After Final communications labeled "Box AF").

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th Floor, receptionist.



Alexander Kalinowski

Patent Examiner

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April 18, 2003